

*What Every Member of the
Trade Community Should Know About:*

*Customs
Enforcement of
Intellectual Property
Rights*



An Informed Compliance Publication

Revised August 2001

U.S. CUSTOMS

NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the Customs Service's position on or interpretation of the applicable laws or regulations as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community’s rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs has issued a series of informed compliance publications, and videos, on new or revised Customs requirements, regulations or procedures, and a variety of classification and valuation issues.

The Intellectual Property Rights Branch of the International Trade Compliance Division, Office of Regulations and Rulings has prepared this publication on ***Customs Enforcement of Intellectual Property Rights*** as part of a series of informed compliance publications advising the public of Customs regulations or procedures. We sincerely hope that this material, together with seminars and increased access to Customs rulings, will help the trade community to improve, as smoothly as possible, voluntary compliance with Customs laws.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant. Reliance solely on the information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Stuart P. Seidel,
Assistant Commissioner
Office of Regulations and Rulings

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I. Background and Introduction

The importance of protecting intellectual property rights has received heightened recognition through the increase in world trade. Some estimates indicate that in 1996 business in the United States lost more than \$200 billion worldwide due to illegal counterfeiting. Between five to eight percent of all goods and services sold world wide are estimated to be counterfeit. The United States Customs Service, established in 1789, is a law enforcement agency of the Department of the Treasury and is vested with the powers of search, seizure and arrest. In an effort to combat the flow of infringing goods into the United States, the United States Customs Service has made a concerted effort to detect infringing merchandise entering the United States and to seize such goods. This mission is accomplished through the cooperation of various disciplines within Customs in targeting infringing merchandise and taking enforcement actions. By statutory authority, Customs has been granted the power to decide substantive issues of trademark and copyright infringement. During fiscal years 1998-2000, U. S. Customs has averaged 3,448 seizures involving intellectual property rights violations, with a domestic value of \$ 73,241,875.

Within the United States legal system both the Customs Service and courts of law are competent legal authorities which are provided the power to make determinations of infringement. As an administrative agency with law enforcement powers, the United States Customs Service has the legal authority to make infringement determinations regarding trademarks and copyrights, pursuant to the Tariff Act of 1930, the Lanham Act of 1946 and the Copyright Act of 1976. Customs, as an administrative agency, is without power to make determinations of patent infringement. Customs issues reasoned written decisions on substantive issues of trademark and copyright infringement. Additionally, Customs has been granted the law enforcement powers of search, seizure and arrest. The United States Customs Service is also charged with enforcing criminal laws pertaining to trademark and copyright infringement.

II. Intellectual Property Rights

A. What are intellectual property rights?

An intellectual property right is a descriptive term covering a vast area of inventive, artistic, descriptive and novel works indicating ownership of a particular right. Under United States law, a **trademark** is defined as a word, name, symbol, device, color or combination thereof used to distinguish goods, which identifies origin and ownership. Property rights in a trademark are created by adopting and using a distinct mark. U.S. Customs protects trademarks which are registered with the United States Patent and Trademark Office. Customs administrative enforcement entitles certification marks, service marks and collective marks to the same protection as trademarks.

Registration of a trademark covers a specific class or classes of goods, for a period of ten years and is renewable. Examples of well known trademarks which have been registered with the United States Patent and Trademark Office and recorded with Customs are depicted below.



Reproduced with the permission of NIKE

A **trade name** is the name under which a company does business. Trade names are not registered with the Patent and Trademark Office but may be recorded with Customs if the name has been used to identify a trade or manufacturer for at least six months. The recordation of trade names is published in the *Customs Bulletin* to provide notice to the public and interested parties an opportunity to oppose the recordation.

A **copyright** protects the fixed tangible expression of an idea and gives the copyright owner the right to prevent the unauthorized use of his work. Under United States law, pursuant to 17 U.S.C. § 102(a), a copyright may exist in: literary works, musical works, dramatic works, pantomimes and choreographic works, pictorial, graphic and sculptural works, motion pictures and other audio visual works, sound recordings, and architectural works. A copyright is registered with the United States Copyright Office for either the life of the author plus 50 years or for 75 or 100 years depending on the authorship of the work and its creation date. United States Customs protection of copyrighted works is primarily concentrated on works which have been recorded with the agency. Non-expired claims to copyright which are registered with the Copyright Office may be recorded with Customs for a fee of \$190. Claims to copyrights entitled to protection under the Berne Convention for the Protection of Literary and Artistic Works, as amended, may also be eligible for recordation. An example of work which has been registered with the U.S. Copyright Office and recorded with Customs is depicted below.



© Disney Enterprises, Inc.

Patents in the United States are registered with the Patent and Trademark Office for any useful process, machine, manufacture or composition of matter or any new and useful improvement thereof. Three types of patents are issued in the United States for a period ranging from 14 to 20 years.

B. What is infringement of an intellectual property right

Infringement of an intellectual property right involves the use of a protected right without the authorization of the right owner. U.S. Customs is empowered to make substantive decisions pertaining to trademark and copyright infringement.

Trademark Infringement

As a competent authority to decide substantive issues of trademark infringement, the United States Customs Service makes determinations as to trademark infringement. Customs regulations provide for three levels of infringement: counterfeit, confusingly similar or “gray market” (diverted goods or parallel importations).

Counterfeit

By statute, Title 15, United States Code, section 1127 (15 U.S.C. § 1127), a counterfeit mark is defined as a spurious mark which is identical with, or substantially indistinguishable from, a registered trademark.

Confusingly Similar

The legal standard for determining infringement where the mark is not counterfeit is “confusingly similar”. Under this standard, the dispositive issue is whether the mark is likely to cause confusion or mistake or to deceive the average consumer.

Gray Market (Parallel Imports)

“Gray market” goods are genuine goods manufactured in a foreign country, bearing a United States trademark and imported without the consent of the United States trademark owner.

Copyright Infringement

The determination of copyright piracy is complex. The basic test is unauthorized substantial similarity of a material protected part of the copyright. In order to establish copyright infringement, copyright ownership and copying must be proven. With regard to establishing ownership of copyrights, pursuant to 17 U.S.C. § 410(c), a copyright registration evinces ownership of the copyright. Proof of copying may be established

through direct evidence of copying or through circumstantial evidence. Direct evidence of copying is rare. Circumstantial evidence of copying requires a showing of access to the work and substantial similarity to the protected work.

Patent Infringement

United States Customs Service enforcement actions relating to patents are limited. Customs is without legal authority to determine patent infringement. However, Customs enforces **exclusion orders** issued by the United States International Trade Commission (ITC) pursuant to Section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), which provides relief to United States industries which have established the existence of unfair trade practices in importing. ITC exclusion orders are issued, among other things, for findings of infringement of a patent. Thus, Customs has authority to exclude from entry goods infringing a patent pursuant to an ITC exclusion order. Pursuant to 19 CFR 12.39(c), seizure is permitted under an ITC seizure order where the owner, importer or consignee has previously attempted to import the article, the article was previously denied entry, and written notice was provided to the importer that further attempt to enter the article would result in seizure and forfeiture.

III. Role of the Intellectual Property Right Owner

A. What information may an IPR owner provide Customs?

U.S. Customs works in close cooperation with intellectual property rights owners. Subsequent to the federal registration of a trademark, a trademark may be recorded with Customs. Recordation with Customs is effective for the term of registration or the remaining period. The recordation is entered into the Intellectual Property Rights module database, a centralized record keeping system, and is accessible by Customs field offices. A portion of the information pertaining to the recordation of copyrights and trademarks and exclusion orders is made available to the public through the Customs Electronic Bulletin Board (CEBB), which may be accessed through U.S. Customs web site on the internet (<http://www.customs.gov>). In the near future, Customs expects to convert the CEBB database into a more user-friendly database with an improved search engine.

Applications to record trademarks or copyrights should be made in the form of a letter addressed to the Chief, Intellectual Property Rights Branch, Office of Regulations and Rulings, U. S. Customs Service, Room 3.4A, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

In regard to trademarks, as well as certification marks, service marks and collective marks, the information required in order to record a mark with Customs includes, but is not limited to, the following:

- the name, complete business address and citizenship of the trademark owner;
- the place of manufacture of goods bearing the recorded trademark;

- the names and addresses of any persons or companies authorized to use the trademark;
- the identity of any parent or subsidiary company or other foreign company under common ownership or control which uses the trademark abroad;
- a status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing title to be in the name of the applicant;
- a fee of \$190 for each trademark recorded.

If the mark is registered for more than one class of goods, the fee for recordation is \$190 for **each class** of goods that the applicant wished to record with Customs. The requirements for recording a trademark with Customs are set forth in detail in Subpart A, Part 133, Customs Regulations (19 C.F.R. pt. 133).

In regard to copyrights, the information required in order to record with Customs includes, but is not limited to, the following:

- the name and complete address of the copyright owner;
- the country of manufacture of genuine copies or phonorecords of the protected work;
- the name and business address of any person or business entity authorized to use the protected work;
- an “additional certificate” of copyright registration issued by the U.S. Copyright Office;
- and a fee of \$190 for each copyright to be recorded.

The requirements for recording a copyright with Customs are set forth in detail in Subpart D, Part 133, Customs Regulations (19 C.F.R. pt. 133). Works protected under the Berne Convention may also be recorded with Customs upon a written submission.

Trademarks are recorded for a term of years to run concurrently with the current registration period of the underlying registration. Copyrights are recorded for twenty years unless the copyright registration expires before that time. Persons interested in recording trademarks or copyrights with Customs should consult the relevant sections of the Customs Regulations, or contact the Intellectual Property Rights Branch, Office of Regulations and Rulings, U.S. Customs. In this regard, it should also be noted that trade names may also be recorded with Customs (Subpart B, Part 133, Customs Regulations).

Trademark and copyright owners who have recorded with Customs and are aware of suspected infringers may provide the following information along with their recordation application or at any time thereafter:

- the name and business address of the importer and/or consignee of the allegedly infringing articles;
- a sufficiently detailed description of the suspect goods to make them readily recognizable by Customs, including a sample of the infringing article or a photographic or other likeness reproduced on paper;

- the country of origin of the shipment and any countries through which the suspect goods are transhipped;
- the country or countries of manufacture of the allegedly infringing merchandise;
- the name and principal business address of each foreign person or business entity involved in the manufacture and/or distribution of suspect article;
- the mode of transportation and the identity of the transporters of the allegedly infringing good;
- the ports where it is anticipated the suspect articles will be presented to Customs;
- the anticipated date of presentation to Customs;
- the Harmonized Tariff Schedule designation of the suspect goods and;
- any additional evidence relating to the importation of the suspect goods.

B. What information will Customs provide to an IPR owner?

Pursuant to the Customs regulations, trademark and copyright owners will be provided certain information where merchandise is detained or seized as infringing a tradename or registered copyright or trademark.

Where merchandise is detained as bearing a confusingly similar mark, as a gray market good or as possibly piratical of a registered and recorded copyright, the intellectual property owner will be provided the following information, if available, within 30 business days of the date of the detention:

- date of importation
- port of entry
- description of merchandise
- quantity involved and
- country of origin of the merchandise

At any time following presentation of the merchandise for Customs examination but prior to seizure, Customs may provide a sample of the merchandise to the intellectual property right owner. The intellectual property right owner is required to file a bond with Customs in order to receive a sample.

Where merchandise is seized as bearing a counterfeit mark or is seized as clearly piratical of a registered copyright, Customs will disclose to the intellectual property right owner the following information, if available, within 30 business days of the date of the seizure notice:

- date of importation
- port of entry
- description of merchandise
- quantity involved
- name and address of manufacturer
- country of origin of merchandise
- name and address of exporter and

- name and address of importer

At any time following seizure of the merchandise, Customs may also provide a sample of the merchandise to the intellectual property right owner. To obtain a sample, the intellectual property right owner must furnish Customs a bond in the form and amount specified by the port director, but not less than \$100, conditioned to hold harmless the United States, its officers and employees, and the importer or owner of the imported merchandise harmless from any loss or damage resulting from the furnishing of a sample by Customs to the intellectual property right owner.

C. How is Customs enforcement of IPR initiated?

United States Customs on its own accord or with assistance from rights owners may initiate enforcement actions to detain or seize infringing merchandise. Through the combined efforts of the many disciplines within Customs and other government agencies, Customs may obtain information leading to the initiation and commencement of an enforcement action by a Customs officer. Where a trademark or copyright is federally registered with either the Patent and Trademark Office or the United States Copyright Office, Customs may take action even if the trademark or copyright has not been recorded with Customs. Customs may initiate enforcement action through the issuance of an alert to field offices throughout the country. These alerts are used as targeting mechanisms to alert Customs field offices to the possible importation of infringing goods. Depending on the results during that time period, Customs may extend the alert. In addition to enforcement actions taken on its own accord, Customs may take a second type of enforcement action through information provided by the right owner in recording the trademark or copyright with Customs.

An invaluable resource in the enforcement of intellectual property rights is the centralized recordation system. This system is the tool by which information is distributed service-wide. The Automated Commercial System Intellectual Property Rights (IPR) Module was designed to make it simpler for import specialists, inspectors and other Customs personnel to quickly find information related to intellectual property as it pertains to imported merchandise. All Customs personnel who have a computer properly connected may access the system. The IPR module is an annotated electronic index to recordations of intellectual property currently on file with the United States Customs Service. Through the system's keyword and other search capabilities, import specialists, inspectors, agents and Customs attorneys can quickly locate basic intellectual property rights information.

The IPR module contains information on all trademarks, copyrights, trade names, and International Trade Commission exclusion orders recorded with Customs. The IPR module also incorporates imaging technology. Photographs, drawings and graphics convey the nature of the intellectual property more effectively than words. With regard to copyrights and trademarks, information contained in the IPR module includes: name of IPR owner, contact person, type of IPR, product, description, owner name, places of

manufacture, licensees, name/address, registration number, recordation number, expiration date, and any images.

Customs may also act upon application of the copyright or trademark right holder with regard to a specific or single shipment. A right holder may request Customs to seize merchandise relating to specific shipments which the right holder suspects will be imported into the United States and which it believes infringes its trademark or copyright. If at the time of recordation or at any point during the term of recordation the trademark owner or the copyright owner has knowledge of infringing importations, the right owner may upon application request that Customs seize merchandise bearing infringing marks or piratical merchandise.

IV. Customs Enforcement of Intellectual Property Rights

A right holder in the United States has available two avenues for enforcing its intellectual property rights at the border. A right holder may seek private redress and file for an injunction or a claim for monetary damages in a court of law, which may enjoin a purported infringer from importing merchandise which infringes the intellectual property right. As stated above, however, a right holder may also seek public redress by petitioning the United States Customs Service to protect its property rights through the seizure of merchandise determined to infringe a federally registered trademark or copyright. As a consequence, there is often an interconnection between these two competent legal authorities, the courts and Customs. A right holder may, in certain cases, present to Customs an injunction obtained from a court of law as evidence of infringement, prohibiting a particular party from importing infringing merchandise. Here, too, however, Customs enforcement covers trademarks and copyright but not patents.

A. How does Customs respond to trademark infringement?

The manner of Customs protection of a trademark right is determined by whether the mark has been recorded with Customs.

Counterfeit

Where imported merchandise bears a mark which is counterfeit of a registered and recorded trademark, Customs may seize the merchandise as bearing a counterfeit mark pursuant to 19 U.S.C. § 1526(e) and provide the importer with notice of the seizure. Customs officers inform the right holder of the seizure of the goods bearing the infringing marks pursuant to Customs regulations. Although Customs focuses on protection of trademarks which have been recorded with Customs, protection for federally registered trademarks which have not been recorded with Customs may also be provided. Where merchandise bears a mark which is determined to be counterfeit of a registered but unrecorded trademark, Customs may seize such merchandise in certain cases pursuant to 19 U.S.C. § 1595a(c)(2)(C) (section 596 of the Tariff Act) for violation of 18 U.S.C. § 2320, involving trafficking in counterfeit goods.

Merchandise which is seized and forfeited as bearing a counterfeit mark must be destroyed, unless the trademark owner provides written consent and the merchandise is not unsafe or a health hazard. Where consent is provided by the trademark owner, after obliteration of the mark where feasible, the merchandise may be delivered to any Federal, State or local government agency, donated to a charitable institution or sold at public auction. In addition to the seizure of merchandise bearing counterfeit registered and recorded marks, pursuant to 19 U.S.C. § 1526(f), Customs may impose a civil fine on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit mark.

Confusingly Similar

Merchandise bearing marks which are “confusingly similar” to registered and recorded trademarks is initially subject to detention. Customs notifies the importer in writing of the detention and provides the importer with the opportunity to show that he has obtained permission from the right holder, that a personal exemption applies, or that if there are no prior incidents, he will obliterate the infringing mark. The importer has 30 days to obtain release of the merchandise. If the merchandise is not released within this time period, the merchandise is seized pursuant to 19 U.S.C. § 1595a(c)(2)(C) for violation of 15 U.S.C. § 1124. Merchandise bearing a mark which is confusingly similar to a trademark registered with the United States Patent and Trademark Office but not recorded with Customs, will, under current Customs policy, not be detained or seized.

Gray Market

Goods bearing a trademark which receives gray market protection are initially subject to detention. Customs provides gray market protection only to trademarks which have been recorded with Customs and where the U.S. trademark owner does not own the foreign trademark abroad and no common ownership or control exists between the U.S. trademark owner and a foreign trademark owner. The importer is notified in writing that the goods have been detained as gray market goods. The importer is provided 30 days to obtain the consent of the U.S. trademark owner to import the goods or to remove the infringing trademarks. The importer has 30 days in which to obtain the release of the merchandise. If the merchandise is not released within this time period, the goods are seized pursuant to 19 U.S.C. § 1526(b). The importation of gray market merchandise fitting the above descriptions is unlawful pursuant to 19 U.S.C. § 1526(a) and subject to seizure under 1526(b).

On February 24, 1999, regulations were published in the Federal Register relating to the implementation of the D.C. Court of Appeals decision in *Lever Bros. Co. v. United States*, 981 F2d 1330 (D.C. Cir. 1993). Prior to the *Lever Bros.* decision, gray market protection was not afforded trademarks where the foreign and U.S. trademark owners were subject to common ownership and control. The D.C. Court of Appeals determined that where the imported goods are physically and materially different from the goods authorized by the U.S. trademark owner, Customs may not exclude the trademark from receiving gray market protection on this basis. The Court of Appeals

found that section 42 of the Lanham Act precluded the application of the affiliate exception where the imported goods were physically and materially different goods and that Customs should provide gray market protection. Section 42 of the Lanham Act protects against consumer deception or confusion about an article's origin or sponsorship.

Part 133 of the Customs Regulations provides that upon application of the trademark owner, even in affiliate exception cases, Customs will consider restricting the importation of physically and materially different products bearing genuine trademarks which are not authorized by the U.S. trademark owner. Under the regulations, Customs will determine whether physical, material differences exist. This determination may include but is not limited to:

- composition of both the authorized and gray market products (including chemical composition),
- formulation,
- product construction,
- structure or composite product components, of both the authorized and gray market product,
- performance and/or operational characteristics of both the authorized and gray market product,
- differences resulting from legal or regulatory requirements, certification etc., and
- other distinguishing and explicitly defined factors that would likely result in consumer deception or confusion as proscribed under applicable law.

The regulations provide further that Customs will publish in the *Customs Bulletin* a notice listing any trademarks for which *Lever-rule* protection has been requested and the specific products for which gray market protection for physically and materially different products has been requested. Customs will examine the requests before issuing a determination on whether *Lever-rule* protection is granted. For parties requesting protection, the application for trademark protection will not take effect until Customs has made and issued this determination. If protection is granted, Customs will publish in the *Customs Bulletin* a notice that a trademark will receive *Lever-rule* protection with regard to a specific product.

The regulations provide that the restriction to importation will not apply where a label is placed on the product informing the ultimate purchaser in the United States that the "product is not the product authorized by the United States trademark owner for importation and is physically and materially different from the authorized product." Under the regulations, where this label is conspicuously placed on goods which would be excluded under *Lever-rule* protection, the goods may then be entered into the U.S.

B. How does Customs respond to copyright infringement?

Clearly Piratical

In cases where the United States Customs Service is convinced that imported merchandise infringes a federally registered copyright and the copyright has been recorded with Customs, pursuant to statutory and regulatory authority, 19 U.S.C. §1595a(c)(2)(c) for a violation of 17 U.S.C. § 602/603 and 19 CFR 133.42, the merchandise will be seized. Where a federally registered copyright has not been recorded with Customs and a determination is made that the merchandise is clearly piratical, the merchandise is subject to seizure pursuant to 19 U.S.C. § 1595a(c)(2)(C) for violation of 17 U.S.C. § 501, or §§ 506, 509 in criminal cases.

Possibly Piratical

As a competent authority, Customs may detain imported merchandise, pursuant to statutory and regulatory authority, where an imported item, when compared to a protected work, raises a suspicion of substantial similarity. If the appropriate Customs officer has any reason to believe that an imported article may be an infringing copy or phonorecord of a recorded copyrighted work, the concerned port director will withhold delivery, notify the importer of his action and advise the importer that if the facts so warrant he may file a statement denying that the article is in fact an infringing copy. The importer is provided the opportunity to either admit or deny that copyright infringement exists and has 30 days to respond to the Customs notice of detention. In the absence of a denial, the merchandise will be considered infringing. Where the importer denies infringement, Customs notifies the copyright owner and provides the party with a sample of the imported merchandise.

If the copyright owner believes that the merchandise infringes its copyright, the copyright owner must file a written request that Customs exclude the merchandise and also deposit a bond within 30 days of the date of the notice, conditioned to hold the importer or owner of the imported article harmless from any loss or damage resulting from Customs detention in the event that Customs determines that the article is not an infringing copy. The amount of the bond is determined by the Port Director (often in the amount of 120% of the dutiable value of the goods).

Where the copyright owner exercises its right to file a written request to exclude the merchandise and the bond is posted, the importer and copyright owner will be afforded 30 days in which to submit additional evidence to the Intellectual Property Rights Branch at Headquarters. Briefs are exchanged between the copyright owner and the importer. Each party may file a response to the arguments raised by the opposing party. A determination is then made by the IPR Branch at Customs Headquarters as to whether the goods are piratical. Where Customs determines the goods are piratical, the goods are seized and forfeited and the bond is returned to the copyright owner. Where Customs determines that the goods are not piratical, the goods are released to the importer and the bond is turned over to the importer.

Merchandise which is initially determined to be possibly piratical of a federally registered copyright which has been recorded with Customs is subject to seizure pursuant to 19 U.S.C. §1595a(c)(2)(c) for a violation of 17 U.S.C. § 602, if ruled to be infringing. Under Customs policy, merchandise which is initially determined to be possibly piratical of a registered copyright which has not been recorded with Customs is not subject to detention or seizure. Articles which have been determined to infringe a copyright will be destroyed pursuant to statutory and regulatory authority, 17 U.S.C. § 603(c) and 19 CFR 133.52(b).

C. What roles do various offices within Customs play?

Through the coordination of various disciplines within Customs and with other agencies, Customs enforces the rights of intellectual property owners. The Office of Field Operations is responsible for the inspection of cargo, baggage, vehicles, vessels and aircraft arriving in the United States and also export control activities. Front line inspectors work in cooperation with import specialists to target shipments which may infringe federally registered trademarks and copyrights. In inspecting merchandise, Customs also coordinates with other agencies, such as the Consumer Product Safety Commission and the Food and Drug Administration. Additionally, field offices frequently communicate with the right holder in enforcing the particular trademark or copyright, or in the case of the enforcement of an exclusion order, the patent or trademark owner.

Laboratories and Scientific Services, Office of Information and Technology, provides scientific and technical information at Headquarters and seven field laboratories across the United States. Among other functions, these laboratories examine merchandise for copyright, patent, and trademark infringement violations. The attorneys in the Intellectual Property Rights Branch of the Office of Regulations and Rulings also play a supportive role in making substantive legal determinations on infringement issues.

The Office of Strategic Trade pinpoints importing trends, provides selectivity and targeting criteria, and compiles statistics on numerous issues, including seizures based on violations of intellectual property rights. The Office of International Affairs is vested with the responsibility of coordinating training and technical assistance to other countries throughout the world. The Office of Investigations performs investigations of all violations of Customs and related laws and regulations, both domestic and foreign, including violations of intellectual property rights. In instances involving substantial evidence, referrals are made by the Office of Investigations to the United States Attorney for possible criminal prosecution. The Office of Chief Counsel provides legal advice to Customs officers and litigation support in civil and criminal cases.

V. Importers and Intellectual Property Rights

A. How may an importer determine whether goods are non-infringing prior to importation?

As a competent authority empowered to decide substantive issues of trademark and copyright infringement, Customs issues reasoned, written rulings and decisions and makes findings of fact and conclusions of law. Pursuant to the Customs regulations, Title 19, U.S. Code of Federal Regulations, section 177.1 (19 CFR 177.1), it is in the interest of the sound administration of the Customs and related laws that persons engaging in any transaction affected by those laws fully understand the consequences of the transaction prior to its consummation.

For this reason, the Customs Service gives full and careful consideration to written requests from importers and other interested parties for rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law, or other appropriate information. Within the context of property interests in trademark and copyright, the Intellectual Property Rights Branch at Customs Headquarters will, upon written request by an importer or interested party, issue rulings on prospective importations, making determinations as to the infringement of any relevant trademarks or copyrights. The ruling letter represents the official position of the Customs Service with respect to the particular transaction and the issue of infringement and is binding on all Customs Service personnel. These rulings are transparent and made available to the public via our Internet web site (see below) and are available for purchase from commercial sources on CD ROM. If a federal court of law issues a relevant opinion to the contrary, that decision will take precedence over Customs.

The United States Customs Service also provides the entire trade community with non-confidential trade related information through the Customs Electronic Bulletin Board (CEBB). The CEEB is accessed through the Customs web site at <http://www.customs.gov>. The CEEB includes information about trademarks and copyrights recorded with Customs as well as International Trade Commission exclusion orders enforced by Customs. Each recordation file may be searched by a keyword. The CEEB users include importers, brokers, lawyers, consultants and shippers. In the near future, Customs expects to convert the CEEB database into a more user-friendly database with an improved search engine.

B. Once the goods are seized what recourse does an importer with seized goods have?

Where goods are seized for trademark or copyright infringement, a seizure notice will be issued to the importer, who may petition for administrative relief or may elect to bring suit to recover the merchandise in federal district court. Where Customs has seized merchandise, pursuant to the Customs regulations, 19 CFR 162.31(a), a written

notice for liability of the forfeiture is issued to each party that the facts of the record indicate has an interest in the seized property. The notice informs any interested party in a case involving the forfeiture of seized property that unless the petitioner provides an express agreement to defer judicial or administrative forfeiture proceedings until completion of the administrative process, the case will be referred to the United States attorney, the prosecutor for the United States government, for forfeiture proceedings. An interested party elects whether to initially pursue remission of the forfeiture through administrative proceedings or to directly file in U.S. federal court.

Additional Information

The U. S. Customs Service's home page on the Internet's World Wide Web, provides the trade community with current, relevant information regarding Customs operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, Customs publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site contains the most current electronic versions of, or links to:

- Customs Regulations and statutes
- Federal Register and public information notices
- The Customs Bulletin and Decisions
- Binding Rulings
- Publications including-
 - *Importing Into the U.S.*
 - other Informed Compliance Publications in the "*What Every Member of the Trade Community Should Know About...*" series
 - *Customs Valuation Encyclopedia*
- Video Tape availability and ordering information
- Information for small businesses

The web site links to the home pages of many other agencies whose importing or exporting regulations Customs helps to enforce. The web site also links to the Customs Electronic Bulletin Board (CEBB), an older electronic system on which Customs notices and drafts were posted. Since December 1999, the CEBB has been only accessible through the web site. Finally, Customs web site contains a wealth of information of interest to a broader public than the trade community -- to international travelers, for example.

The Customs Service's web address is <http://www.customs.gov>.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 CFR Part 177, or obtain advice from an expert (such as a licensed customs broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will usually be found under U.S. Government, Treasury Department.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs, call 1-888-REG-FAIR (1-888-734-3247).



**U.S. Customs Service
Washington, D.C. 20229**

**Please visit the U.S. Customs Service Web Site at <http://www.customs.gov>
TO REPORT DRUG SMUGGLING
1(800) BE ALERT**